IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. MARVIN RAY PETERS, aka MARVIN R. MALOY, Appellant.	)	No. 63359-7-I DIVISION ONE UNPUBLISHED OPINION FILED: June 7, 2010

Becker, J. — Marvin Maloy[1] was convicted of malicious mischief. We reject his argument that the evidence was insufficient. We do not review his claim of instructional error with respect to an instruction that he proposed because any error was invited. The conviction is affirmed.

Joshua Lee testified about events that occurred in the middle of the night in Renton, Washington, on January 25, 2008. He and another employee of Western Automotive Recovery went to repossess Maloy's Lincoln Navigator. As they were securing the Navigator to their tow truck, Maloy ran from his house, got in the Navigator, and started its engine. Lee climbed into the tow truck and

[1] We refer to Marvin Ray Peters as Marvin Maloy or Maloy throughout this opinion.

drove out onto Rainier Avenue, dragging the partially secured Navigator for half a block. Maloy put the Navigator into gear to resist being towed. Lee's partner called the police.

Lee testified that he got out of the tow truck and watched as Maloy put the Navigator alternately into drive and reverse, rocking the vehicle back and forth against the tow truck's securing hooks and straps. Lee repeatedly told Maloy "he might as well give up," that the police were coming, and that he would not be able to free the Navigator. Maloy ignored him. Lee said Maloy rammed the tow truck 30 to 40 times over the course of 3 to 5 minutes. This activity broke the securing straps loose and damaged the tow truck's electrical and hydraulic equipment, while at the same time ruining the Navigator.

An officer who responded to the scene testified that the Navigator was rocking back and forth when she arrived around 3:20 a.m. She heard twisting metal, saw smoke, and smelled burned rubber. Another officer testified that when asked why he was ramming the tow truck, Maloy answered, "because they were taking my vehicle." Maloy said he knew it was a repossession.

Maloy was sentenced to two months' electronic home detention. He appeals.

Maloy argues the State did not present sufficient evidence that he acted with malice and therefore did not prove all elements of the crime. "A person is guilty of malicious mischief in the first degree if he knowingly and maliciously:

(a) Causes physical damage to the property of another in an amount exceeding one thousand five hundred dollars." Former RCW 9A.48.070 (2008). Jury instruction 11 stated that "malice and maliciously mean an evil intent, wish, or design to vex, annoy, or injure another person. Malice may be, but is not required to be, inferred from an act done in willful disregard of the rights of another."

"The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt." State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Contrary to Maloy's argument, to prove malice it is not necessary to show that the defendant made verbal threats or other expressions of animosity. Maloy repeatedly rammed the tow truck after he was informed police had been called and after he had nearly destroyed his own vehicle. This evidence is sufficient to support an inference that he acted with the intention of damaging the tow truck with a desire to vex those persons who were participating in the repossession of his vehicle. It is possible a jury might have found that he was merely trying to regain possession of a vehicle he believed was rightfully his, but they could also have found that his actions were unnecessary for that purpose. Viewed in the light most favorable to the State, the evidence was sufficient for a rational trier of fact to find Maloy guilty beyond a reasonable doubt.

At trial, Maloy requested the instruction defining "malice" and "maliciously" (instruction 11). He now argues the instruction undermined his ability to argue his defense. A party may not request an instruction and later complain on appeal that the instruction was given, even if the alleged error is constitutional in nature. State v. Studd, 137 Wn.2d 533, 546, 973 P.2d 1049 (1999). We therefore decline to review this claim of error.

Affirmed.

Becker, J.

WE CONCUR:

Schindler, J.

Ellington, J.